

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 FRESNO DIVISION

In re ) Case No. 22-12056-B-13  
 )  
**SHANNON HAGER,** ) DCN PK-2  
 )  
 Debtor. )  
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 )

**MEMORANDUM RULING ON MOTION TO ANNUL STAY**

Patrick Kavanagh, LAW OFFICES OF PATRICK KAVANAGH, Bakersfield, CA, for Ian McGilvray, Movant.

Andrew J. Christensen, LAW OFFICES OF ANDREW J. CHRISTENSEN, P.C., Oakland, CA, & Robert S. Williams, WILLIAMS & WILLIAMS, INC., Bakersfield CA, for Shannon Hager, Debtor.

RENÉ LASTRETO II, Bankruptcy Judge:

California's nonjudicial foreclosure system is designed to provide the lender-beneficiary with an inexpensive and efficient remedy against a defaulting borrower, while protecting the borrower from wrongful loss of the property and ensuring that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser. *Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777 (1994).

My, how things change.

Ian McGilvray ("McGilvray") moved to annul the automatic stay under 11 U.S.C. § 362(d)(1) to validate his purchase of

1 real property located at 2313 Sycamore Lane, Pine Mountain Club,  
2 CA 93222 ("Property") at a foreclosure sale, and to allow him to  
3 proceed with his unlawful detainer action in Kern County  
4 Superior Court, entitled *Giuliana Vista GP v. Shannon Hager, et*  
5 *al.*, case no. BCL-23-010025 ("Unlawful Detainer Action").<sup>1</sup> Dckt.  
6 44. McGilvray also requested waiver of the 14-day stay of Fed.  
7 R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

8 Shannon Hager ("Debtor") timely opposed and McGilvray  
9 replied. Dckt. 58-59, 61-64.

10 At the hearing on May 17, 2023, the parties presented oral  
11 argument and the court took the matter under submission. Dckt.  
12 65. Under 11 U.S.C. § 362(e) and for good cause, the court  
13 ordered continuation of the automatic stay through July 14,  
14 2023, unless terminated by further order of the court. *Id.*

15 Applying the amended California foreclosure statutes and  
16 weighing the factors at play when considering a request to annul  
17 the stay, the court finds annulment inappropriate and DENIES the  
18 motion.

## 19 20 I. FACTS

21 In early November 2022, Property was Debtor Shannon Hager's  
22 residence. She lived there for 24 years. Dckt. 62. Her sister  
23 and her 75-year-old mother with declining health also reside  
24 there. *Id.* Property, which is in one of the mountain communities  
25 in Tejon Pass in southwestern Kern County, was encumbered by a  
26 Deed of Trust in favor of Flagstar Bank ("Flagstar"). Due to the

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27  
28 <sup>1</sup> McGilvray is one of the partners in Giuliana Vista ("Giuliana Vista").  
Dckt. 32.

1 COVID-19 outbreak, Ms. Hager's employment and that of her sister  
2 and daughter, were interrupted. *Id.* Earlier, she had difficulty  
3 making payments to Flagstar. *Id.* So, Flagstar agreed to forbear  
4 collection of some payments. But due to Ms. Hager's employment  
5 situation, she could not qualify for a loan modification. *Id.*  
6 Flagstar rejected Ms. Hager's tender of \$10,000 six months  
7 earlier and was foreclosing.

8       McGilvray has been in the real estate business for years  
9 and has purchased properties at foreclosure sales before. Dckt.  
10 48. He is also familiar with the "multiple steps" foreclosing  
11 parties have to take to foreclose on certain properties  
12 including allowing for sales to "non-profits." *Id.*

13       McGilvray purchased Property at the nonjudicial  
14 foreclosure sale for \$164,512.71 on November 7, 2022. Dckt 48.  
15 Multiple parties submitted notices of intent to bid on the  
16 Property from November 10 to 21, 2022, but it is undisputed that  
17 no bids were received. *Ex. A*, Dckt. 63. The foreclosure trustee,  
18 Prober & Rafael ("Prober"), executed the *Trustee's Deed Upon*  
19 *Sale* ("Trustee's Deed") on November 23, 2022 and sent it to  
20 McGilvray. *Ex. A*, Dckt. 49.

21       On December 1, 2022, 21 days after the foreclosure sale,  
22 Debtor filed chapter 13 bankruptcy. Dckt. 1. She says she did  
23 not know of the foreclosure sale until someone claiming to be  
24 the owner of Property called her the day after Thanksgiving,  
25 2022. Dckt. 62. The day after Debtor filed her bankruptcy case,  
26 McGilvray submitted the Trustee's Deed to the Kern County  
27 recorder's office who recorded it that day. *Ex. A*, Dckt. 49.  
28 McGilvray claims he had no knowledge of the bankruptcy at that

1 time. Dckt. 48. McGilvray initiated the Unlawful Detainer Action  
2 about one month later. *Ex. B*, Dckt. 29. According to McGilvray's  
3 attorney, the Unlawful Detainer Action has been dismissed.

4 Debtor valued Property in her schedules at \$426,600 and  
5 listed Flagstar as the mortgagee with a secured claim of  
6 \$177,863.79. Dckt. 18. Flagstar's treatment under the proposed  
7 plan is to be paid as though the foreclosure sale did not occur.  
8 Dckt. 17. Notably, neither McGilvray nor Giuliana Vista were  
9 listed as creditors in the schedules or the master address list.  
10 Dckt. 1, 3, 18.

11 On March 1, 2023, McGilvray filed a motion for relief from  
12 the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2). Dckt.  
13 27; PK-1. The court granted the motion without retroactive  
14 relief because it was not requested. Dckt. 37. The court  
15 directed McGilvray to prepare the order, which was to be  
16 approved by Debtor's counsel, but an order is not yet submitted.

17 McGilvray now seeks to annul the stay on two grounds. Dckt.  
18 44. First, he contends California law allows the post-petition  
19 recording of the Trustee's Deed to relate back to the date of  
20 the sale. Since notices of intent to bid were submitted,  
21 McGilvray contends the Trustee's Deed will be deemed perfected  
22 as of the date of the sale under Cal. Civ. Code § 2924h(c) if it  
23 is recorded within 60 days of the sale, as it was here. Dckt.  
24 46. Second, McGilvray contends the *Fjeldsted* balancing test  
25 supports annulling the automatic stay. *Id.*; see *Fjeldsted v.*  
26 *Lien (In re Fjeldsted)*, 293 B.R. 12, 32 (B.A.P. 9th Cir. 2003).

27 Debtor opposes, first, because the foreclosure sale was  
28 void as a matter of law for violating the automatic stay. Under

1 California law, Debtor argues the trustee's sale was not final  
2 before the bankruptcy was filed. Dckt. 61. Second, Debtor  
3 contends the *Fjeldsted* factors do not support annulling the  
4 stay. *Id.* Neither party requested discovery. Both parties  
5 consented on the record to the court taking this matter under  
6 submission and ruling based on the existing record.

## 7 8 II. JURISDICTION

9 The United States District Court for the Eastern District  
10 of California has jurisdiction of this civil proceeding by  
11 virtue of 28 U.S.C. § 1334(b) because it arises under title 11  
12 and in a case under title 11 of the United States Code. The  
13 District Court has referred this matter to this court under 28  
14 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C.  
15 § 157(b) (2) (G).

## 16 17 III. ISSUES

18 1. Whether the post-petition finalizing of a pre-petition  
19 foreclosure sale subject to overbid under Cal. Civ. Code ("CC")  
20 § 2924m(c) violated the automatic stay of 11 U.S.C. § 362(a).

21 2. If the automatic stay does apply, whether to annul the  
22 automatic stay under applicable law.

## 23 24 IV. DISCUSSION

### 25 A. Important General Concepts

26 A bankruptcy petition operates as a stay applicable to all  
27 parties and preventing, among other things, any act to obtain  
28 possession of property of the estate. 11 U.S.C. § 362(a) (3). The

1 stay does not apply to any act to perfect an interest in  
2 property to the extent that the trustee's rights are subject to  
3 perfection under 11 U.S.C. § 546(b). That section permits an  
4 entity who acquires rights to property pre-petition to perfect  
5 its interest in property post-petition. *In re Stork*, 212 B.R.  
6 970, 971 (Bankr. N.D. Cal. 1997).

7 The Debtor bears the ultimate burden of proving that the  
8 request for retroactive relief from the stay should be denied.  
9 *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l*  
10 *Envtl. Waste Corp.)*, 129 F.3d 1052, 1055 (9th Cir. 1997).

11 State law determines the property rights of the parties,  
12 and whether those rights are obtained pre- or post-petition.  
13 *Butner v. United States*, 440 U.S. 48 (1979). We must "look to  
14 state law to determine property interests of the debtor." *Eden*  
15 *Place LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1127 (9th Cir.  
16 2016). That said, filing bankruptcy cannot give a debtor a  
17 greater interest in an asset than that which she owned pre-  
18 bankruptcy. *Gendreau v. Gendreau (In re Gendreau)*, 122 F.3d 815,  
19 819 (9th Cir. 1997).

20 In interpreting California law, CC § 4 requires the Civil  
21 Code "to be liberally construed with view to effect its objects  
22 and to promote justice." *Blevins v. Palmer*, 172 Cal. App. 2d  
23 324, 327, 242 P.2d 356, 358 (1959) ("[P]rovisions of the Civil  
24 Code dealing with transfers of real property are, as required by  
25 section 4, to be 'liberally construed with a view to effect its  
26 objects.'" (citations omitted). In the case of substantially  
27 similar existing statutes, the Civil Code shall be construed as  
28 a continuation, rather than as a new enactment. CC § 5.

1 Words and phrases are construed according to their context  
2 and the approved usage, but technical words and phrases are to  
3 be construed according to peculiar and appropriate meaning or  
4 definition. CC § 13. *Los Angeles Cnty. v. Frisbie*, 19 Cal. 2d  
5 634, 639, 122 P.2d 526, 529 (1942) ("While the intention of the  
6 legislature must be ascertained from the words used to express  
7 it, the manifest reason and the obvious design of the law should  
8 not be sacrificed to a literal interpretation of such  
9 language."), citing *In re Haines*, 195 Cal. 605, 612, 234 P. 883,  
10 885-86 (1925).

11  
12 B. Prior California law

13 California substantially modified its foreclosure scheme in  
14 2020, effective January 1, 2021 through January 1, 2026.<sup>2</sup> Since  
15 then, it has been further amended and the sunset has been  
16 extended to January 1, 2031.<sup>3</sup>

17 Under former California law in effect through the end of  
18 2020, the analysis here would have been relatively  
19 straightforward. A foreclosure sale occurred before the  
20 bankruptcy was filed. The sale was deemed final on the date of  
21 the foreclosure sale. CC § 2924h(c) (2020).<sup>4</sup> A timely recorded  
22 trustee's deed post-petition would have related back to the date  
23 of the sale. *Id.* Debtor would have possessed only bare legal  
24

25 <sup>2</sup> Senate Bill ("SB") 1079, Cal. 2019-20 Reg. Sess. (eff. Jan. 1, 2021)

26 <sup>3</sup> Assembly Bill ("AB") 175, Cal. 2021-22 Reg. Sess. (eff. Jan. 1, 2022);  
27 AB 1837, Cal. 2022-23 Reg. Sess. (eff. Jan. 1, 2023). At the time this case  
28 was filed and the salient facts here occurred, the relevant California Civil  
Code in effect from Jan. 1, 2022 through Dec. 31, 2022 was applicable (AB  
175). Unless otherwise indicated, references to the Civil Code are to this  
2022 version.

<sup>4</sup> SB 1277, Cal. 2003-04 Reg. Sess. (eff. Jan. 1 2005-Dec. 31, 2020).

1 title to the Property on the petition date and Debtor's  
2 equitable title would have been extinguished whether or not a  
3 trustee's deed had been recorded before the bankruptcy. Stay  
4 relief would not have been required to record the trustee's deed  
5 under § 362(b)(3) as a post-petition perfection of the pre-  
6 petition interest in Property. The sale would not be avoidable  
7 because the trustee's rights to avoid the transfer under 11  
8 U.S.C. §§ 544(a) or 549 are subordinate to perfection of pre-  
9 petition interests under 11 U.S.C. § 546(b).<sup>5</sup>

10 Prior to January 1, 2021, CC § 2924h(c) controlled finality  
11 of the sale and perfection. That provision provided that a  
12 trustee's sale "shall be deemed final upon the acceptance of the  
13 last and highest bid and shall be deemed perfected as of 8 a.m.  
14 on the actual date of sale if the trustee's deed is recorded  
15 within 15 calendar days after the sale . . ." CC § 2924h(c)  
16 (2020).

17 Bankruptcy courts quickly established the "ground rules"  
18 for invoking the previous version of CC § 2924h(c). A  
19 foreclosure sale commenced after a bankruptcy filing was void  
20 notwithstanding former CC § 2924h(c). *Blatnick v. Sanders (In re*  
21 *Sanders)*, 198 B.R. 326, 327-28 (Bankr. S.D. Cal. 1996) ("[CC]  
22 § 2924h(c) properly may only be invoked, if at all, where there  
23 is a valid foreclosure sale which occurs pre-petition.").<sup>6</sup> If  
24 "the gavel falls" at the foreclosure sale against the debtors  
25 pre-petition, the sale is finalized and the debtors possess only

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26  
27 <sup>5</sup> This is a chapter 13 case. The debtor's lingering "rights" post-  
petition would be defined by §§ 1302, 1303, and 1306(b).

28 <sup>6</sup> The *Sanders* court annulled the automatic stay because of the debtor's  
bad faith. *Sanders*, 198 B.R. at 329-30.



1 bare legal title, which "is of no value to the estate." *Davisson*  
2 *v. Engles (In re Engles)*, 193 B.R. 23, 25, 27-28 (Bankr. S.D.  
3 Cal. 1996) (citations omitted). If the trustee's deed resulting  
4 from a pre-petition foreclosure sale was recorded within the  
5 then-applicable 15-days after the sale, the recordation of the  
6 trustee's deed did not violate the automatic stay under 11  
7 U.S.C. § 362 (b) (3). *In re Garner*, 208 B.R. 698, 701 (Bankr.  
8 N.D. Cal. 1997);<sup>7</sup> *Bebensee-Wong v. Fannie Mae*, 248 B.R. 820, 823  
9 (B.A.P. 9th Cir. 2000) (holding the automatic stay is not  
10 violated with a timely post-petition recording of a trustee's  
11 deed upon a pre-petition sale); *cf. In re Stork*, 212 B.R. at 972  
12 (although the post-petition recording of pre-petition trustee's  
13 deed outside of then-15-day relation-back window violated the  
14 stay, annulment was appropriate because purchaser qualified for  
15 protection under 11 U.S.C. § 549(c)).

16 This approach has been applied on numerous occasions.  
17 *Turturici v. Nat'l Mortg. Servicing, LP*, No. CIV-S-10-2853 KJM,  
18 2011 U.S. Dist. LEXIS 109242, 2011 WL 4480169 (E.D. Cal. Sep.  
19 24, 2011); *Edwards v. Wells Fargo Bank, N.A. (In re Edwards)*,  
20 454 B.R. 100 (B.A.P. 9th Cir. 2011); *In re Lucore*, No. SC-12-  
21 1604-JuBaPa, 2013 Bankr. LEXIS 2498, 2013 WL 2367800 (B.A.P. 9th  
22 Cir. May 30, 2013); *In re Shirazi*, 2013 U.S. Dist. LEXIS 85654,  
23 2013 WL 3070996 (Bankr. C.D. Cal. June 18, 2013); *In re Richter*,  
24 525 B.R. 735 (Bankr. C.D. Cal. 2015); *In re Scavina*, 618 B.R.  
25 852 (Bankr. C.D. Cal. 2020).

26 This relative stasis was significantly upset in 2020.

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27 <sup>7</sup> The *Garner* court noted if the recording of the trustee's deed occurred  
28 more than 15 days after the foreclosure sale, the automatic stay would be  
violated. *Garner*, 208 B.R. at 701.

1 C. Current California law

2 When California amended its foreclosure scheme in 2020,  
3 effective January 1, 2021, certain contingent overbid rights  
4 were given to any "prospective owner-occupant," "eligible tenant  
5 buyer," and "eligible bidder."<sup>8</sup> The statutory scheme for  
6 determining sale finality and overbid procedure, if applicable,  
7 was expanded by enacting CC § 2924m(c). CC § 2924h(c) was also  
8 amended to extend the relation-back period, first to 18 days,  
9 and then to 21 days beginning in 2022.<sup>9</sup> This relation-back period  
10 can be further extended under certain circumstances.

11 Under CC § 2924m(c), if a foreclosure sale of a real  
12 property containing 1-4 residential units is completed and the  
13 prevailing bidder is a prospective owner-occupant as defined in  
14 CC § 2924m(a)(1), then the sale is final, and that person will  
15 immediately take title to the property. CC § 2924m(c)(1). If the  
16 prospective owner-occupant records their trustee's deed within  
17 21 days of the sale, then the sale will be deemed final on the  
18 foreclosure sale date, and the trustee's deed perfected as of 8  
19 a.m. on the actual date of the sale. CC § 2924h(c).

20 If the prevailing bidder is not a prospective owner-  
21 occupant, then a 15-day window opens after the sale. While the  
22 window is open, eligible third parties may submit bids or  
23 notices of intent to bid, and the sale will not be deemed final  
24 until the earliest of one of the conditions specified in CC  
25 § 2924m(c)(1) through (c)(4) are satisfied.

26 ///

27 \_\_\_\_\_  
28 <sup>8</sup> SB 1079 (2020).

<sup>9</sup> AB 175 (2021).

1        Within 48 hours of the sale, the foreclosing trustee is  
2        required to post facts on the internet website set forth in the  
3        notice of sale: (1) the date on which the foreclosure sale took  
4        place; (2) the amount of the last and highest bid at the sale;  
5        and (3) an address at which the trustee can receive documents  
6        sent via U.S. mail and overnight delivery. CC § 2924m(e)(1). The  
7        purpose of this posting is to inform prospective eligible  
8        bidders of the sale and to provide them with an opportunity to  
9        bid or submit a notice of intent to bid.<sup>10</sup>

10       If no bids or notices of intent to bid are received by the  
11       foreclosing trustee by the 15th day, then the window closes. The  
12       sale is final on the 15th day after the foreclosure sale. CC  
13       § 2924m(c)(2). If the trustee's deed is recorded by the 21st day  
14       after the sale, then the sale will be deemed final and perfected  
15       as of 8:00 a.m. on the date of the sale. CC § 2924h(c).

16       If, however, a representative of all eligible tenant buyers  
17       submits a bid that (i) matches the foreclosure sale price, (ii)  
18       is sent to the trustee by certified mail, overnight delivery, or  
19       another method allowing confirmation of the delivery date, and  
20       (iii) such bid is received by the trustee before 5:00 p.m. on  
21       the 15th day after the foreclosure sale (while the window is  
22       open), then the sale is immediately deemed final and the  
23       eligible tenant buyers will take title to the property. CC

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24  
25       <sup>10</sup> An "eligible bidder" is broadly defined to include eligible tenant  
26       buyers, prospective owner-occupants, and certain types of nonprofit  
27       associations, nonprofit corporations, cooperative corporations, limited  
28       partnerships, limited liability companies, community land trusts, and  
29       limited-equity housing cooperatives, as well as the state, the Regents of the  
30       University of California, a county, city, district, public authority, or  
31       public agency, and any other political subdivision or public corporation in  
32       the state. CC § 2924m(a)(3).

1 § 2924m(c) (3). This provision essentially operates as a right of  
2 first refusal for tenants. Under this scenario, if the eligible  
3 tenant buyers' trustee's deed is recorded within 60 days, then  
4 both the sale and recordation will be deemed final and deemed  
5 perfected as of 8:00 a.m. on the date of the foreclosure sale.  
6 CC § 2924h(c).

7 Alternatively, during the same 15-day window, any current  
8 tenant in the property and all other eligible bidders can submit  
9 a higher offer than the foreclosure sale price or a non-binding  
10 notice of intent to bid. CC § 2924m(c) (2). Should either of  
11 these occur, an additional window of time opens lasting until  
12 the 45th day after the foreclosure sale. *Id.*

13 While this 45-day window is open, a representative of all  
14 current tenants can match the sale price to have it immediately  
15 deemed final. CC § 2924m(c) (3) (A). The tenant will immediately  
16 take title to the property. If the deed is recorded within 60  
17 days of the foreclosure sale, then the sale will be deemed final  
18 and deemed perfected as of 8:00 a.m. on the date of the  
19 foreclosure sale. CC §§ 2924m(c) (3) (B), 2924h(c).

20 On the other hand, if an eligible bidder who timely  
21 provided a notice of intent to bid to the trustee in the first  
22 15-day window submits a bid that exceeds the foreclosure sale  
23 price within the 45-day window, the sale is deemed final at the  
24 conclusion of the 45-day window. CC § 2924m(c) (4) (B). The  
25 eligible bidder with the highest offer will take title to the  
26 property. Relation back under CC § 2924h(c) is not in the  
27 statute and is not applicable. More on this later.

28 ///

1        Lastly, if, by the 45th day at 5:00 p.m., no eligible  
2 bidders or eligible tenant buyers have submitted bids pursuant  
3 to their timely notices of intent to bid, then the sale will be  
4 final at the end of the 45th day, and the last, highest bidder  
5 at the initial foreclosure sale auction will take title to the  
6 property. CC § 2924m(c) (4) (A) .

7  
8 D. The Sale Finalized Post-Petition and Violated the Stay

9        The last scenario describes this dispute. The foreclosure  
10 sale occurred on November 7, 2022. *Ex. A*, Dckt. 49. Since  
11 McGilvray is an investor and not a prospective owner-occupant, a  
12 15-day period to overbid opened from the date of the sale.

13        Several eligible bidders submitted notices of intent to bid  
14 during the 15-day window. *Ex. A*, Dckt. 63. These notices of  
15 intent to bid opened a 45-day window running from the date of  
16 the sale in which these eligible bidders could submit a bid  
17 exceeding the foreclosure sale price and comply with other  
18 requirements. No bids were received.<sup>11</sup> Thus, the sale became  
19 final on the 45th day at 5 p.m.: December 22, 2022. By then,  
20 Debtor had already filed bankruptcy. The automatic stay was in  
21 effect. Finalizing the sale on or after that date violates the  
22 stay. Any violation of the stay is void and without effect.

23 *Sanders*, 198 B.R. at 328 (citing *In re Stringer*, 847 F.2d 549  
24 (9th Cir. 1988); *In re Schwartz*, 954 F.2d 569 (9th Cir. 1992);  
25 ///

26 \_\_\_\_\_  
27 <sup>11</sup> Debtor's counsel argues that bids may have been received if McGilvray  
28 had not prematurely recorded the Trustee's Deed 25 days after the sale, and  
instead allowed the full 45-day period to run its course. That is speculative  
on this record.

1 *In re Krueger*, 88 B.R. 238, 241 (B.A.P. 9th Cir. 1988)).

2 Therefore, the sale is void for violating the automatic stay.

3 McGilvray recorded the Trustee's Deed on December 2, 2022,  
4 which is 20 days before the expiration of the 45-day window.<sup>12</sup> At  
5 that time, such perfection could not be accomplished because the  
6 sale had not yet been "deemed final." CC § 2924m(c), (c)(4).

7 Notwithstanding CC § 2924m(c)(4), McGilvray argues he  
8 qualifies under CC § 2924h(c) to have the sale deemed final upon  
9 the foreclosing trustee's acceptance of McGilvray's last and  
10 highest bid, and to have his interest deemed perfected as of 8  
11 a.m. on the actual date of the sale because the Trustee's Deed  
12 was recorded within 60 days. Dckt. 46.

13 In response, Debtor emphasizes the distinction between a  
14 sale being "deemed final" and "deemed perfected." Dckt. 61.  
15 Debtor contends that CC § 2924m(c) prevails over § 2924h(c) as  
16 to when the sale is deemed final. Debtor also asserts that the  
17 60-day relation-back period for perfection applies only if there  
18 is a notice of intent to bid submitted by an eligible tenant  
19 buyer. Since the 60-day relation-back period did not apply,  
20 Debtor maintains that McGilvray only had a 21-day period under  
21 CC § 2924h(c) to have the perfection relate back to the date of  
22 the sale.

23 McGilvray replies that Debtor's interpretation is a radical  
24 departure from the pre-existing law and a departure from the  
25 cases that have interpreted the law. Dckt. 59. Although the  
26 court agrees that CC § 2924m is a radical departure from the

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27  
28 <sup>12</sup> It is also 25 days after the foreclosure sale, which is outside the  
21-day "relation back" period under CC § 2924h(c).

1 prior precedent, the legislature has changed when a foreclosure  
2 sale is deemed final for affected properties.

3 The distinction between finality and perfection is  
4 important. "Deemed final" means the point in time in which the  
5 foreclosure sale is considered completed and equitable title  
6 transfers from the mortgagor/homeowner to the buyer, and when a  
7 sale is "deemed final" is controlled by CC §§ 2924m(c) and  
8 2924h(c). Prior to the enactment of § 2924m(c), foreclosure  
9 sales were "deemed final" at the time of the sale under CC  
10 § 2924h(c). *Engles*, 193 B.R. at 29; *Sanders*, 198 B.R. at 327;  
11 *Garner*, 208 B.R. at 700; *Bebensee-Wong*, 248 B.R. at 822. But  
12 that is no longer the rule. Now, CC § 2924m(c) controls finality  
13 except in certain circumstances where CC § 2924h(c) is  
14 applicable. See, e.g., *Students v. Clear Recon Corp.*, No.  
15 56202200566272CUORVT, 2022 WL 17541903 (Cal.Super. Nov. 4, 2022)  
16 ("[T]he general rule about when a trustee's sale is deemed final  
17 is not applicable in the present case, which instead is governed  
18 by Civ. Code § 2924m due to Plaintiffs attempt to make an  
19 overbid pursuant to § 2924m.")

20 Meanwhile, the point in time in which a sale is "deemed  
21 perfected" is controlled by CC § 2924h(c). The difference is  
22 that the 60-day relation-back period for having a sale both  
23 "deemed final" and "deemed perfected" is only applicable if  
24 notices of intent to bid are received from eligible tenant  
25 buyers for properties with 1-4 residential units. In all other  
26 cases, the finality and perfection of a sale will occur under  
27 § 2924h(c) if the deed is recorded within 21 days. Since CC  
28 § 2924h(c) specifically references CC § 2924m(c) (3), and not

1 (c), (c)(2), or (c)(4), Debtor contends, and the court agrees,  
2 that when a sale is subject to the 45-day overbid window, CC  
3 § 2924h(c) only applies to eligible tenant buyers, rather than  
4 eligible bidders and prospective owner occupants. It is  
5 undisputed that McGilvray is not a tenant buyer.

6 CC § 2924h(c) states, in relevant part:

7 For the purposes of this subdivision, the  
8 trustee's sale shall be deemed final upon the  
9 acceptance of the last and highest bid and  
10 shall be deemed perfected as of 8 a.m. on the  
11 actual date of sale if the trustee's deed is  
12 recorded within 21 calendar days after the  
13 sale, or the next business day following the  
14 21st day if the county recorder in which the  
15 property is located is closed on the 21st day.  
16 If an eligible bidder submits a written notice  
of intent to bid **pursuant to paragraph (3) of  
subdivision (c) of Section 2924m**, the  
trustee's sale shall be **deemed perfected** as  
of 8 a.m. on the actual date of sale if the  
trustee's deed is recorded within 60 calendar  
days after the sale or the next business day  
following the 60th day if the county recorder  
in which the property is located is closed on  
the 60th day . . .

17 CC § 2924h(c) (emphasis added).

18 First, the relation-back period expired after the after  
19 21st day. The 60-day window is only applicable for bids or  
20 notices of intent to bid that were submitted pursuant to CC  
21 § 2924h(c)(3), which is specific to eligible tenant buyers only.  
22 CC § 2924h(c) appears to be ambiguous at first glance because it  
23 refers to an "eligible bidder" while citing to CC § 2924m(c)(3),  
24 rather than (c), (c)(2) or (c)(4).

25 If a general statute states that its provisions govern  
26 except as otherwise expressly provided by statute, a specific  
27 statute governing the same matter in a particular context will  
28 be treated as an express exception to the general statute.



1 *Williams v. Chino Valley Indep. Fire Dist.*, 61 Cal. 4th 97, 104-  
2 109, 347 P.3d 976 (2015). When a statute with reference to one  
3 subject contains a given term or provision, the omission of that  
4 term or provision from another part of the same statute, or from  
5 a similar statute concerning the related subject, is significant  
6 to show that a different legislative intent existed. *Dep't*  
7 *Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015); *Kabran v.*  
8 *Sharp Mem'l Hosp.*, 2 Cal. 5th 330, 344, 386 P.3d 1159 (2017). If  
9 the legislature intended to allow all eligible bidders to take  
10 advantage of the 60-day relation-back period, then it could have  
11 referenced the bidding procedure in (c), (c)(2), or (c)(4),  
12 rather than specifically to (c)(3).

13 The Assembly Judiciary Committee Report<sup>13</sup> on SB 1079  
14 indicates that the legislative purpose of SB 1079 was to "curb  
15 further purchases of single-family homes at foreclosure auctions  
16 by companies that then operate them as rental properties." SB  
17 1079 (Skinner), Cal. Assemb. Judiciary Comm. Report (Aug. 12,  
18 2020).<sup>14</sup> This report's description of the bidding procedure under  
19 CC § 2924m(c)(3) and (c)(4) when notices of intent to bid or  
20 bids are submitted and a 45-day window opens makes clear that  
21 the relation-back provision was intended to only apply to  
22 eligible tenant buyers:

23 ///

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25 <sup>13</sup> The court may consider statements in legislative committee reports  
26 concerning the statutory objects and purposes that are in accord with a  
reasonable interpretation of the statute as an aid in determining legislative  
27 intent. *S. Cal. Gas Co. v. Pub. Utils. Com.*, 24 Cal. 3d 653, 659, 156 Cal.  
Rptr. 733, 767, 596 P.2d 1149, 1152 (1979).

28 <sup>14</sup> The legislative committee documents for SB 1079 are available at  
[https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200SB1079](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB1079) (visited May 23, 2023).

g) During the 45-day window, a representative of all of the current tenant[s] in the house again has a right of first refusal to match the foreclosure sale price. If, at any time during the 45 days, this representative matches the foreclosure sale price, the sale is immediately deemed final and the tenant will take title to the property.

h) During the same 45-day window, any current tenant in the property and all other eligible bidders can submit higher offers than the foreclosure sale price.

i) If, during the 45 days, one or more of the eligible bidders submits a bid that exceeds the foreclosure sale price, the sale is deemed final at the conclusion of the 45 days, and the eligible bidder that made the highest offer will take title to the property.

j) Otherwise, the sale is deemed final at the conclusion of the 45 days, and the party that made the last and highest offer at the initial foreclosure auction will take title to the property.

*Id.* at 3-4 (emphasis added).

Second, CC § 2924m(f)<sup>15</sup> states that “[t]his section shall prevail over any conflicting provision of Section 2924h.” Contemporaneously, CC § 2924h(f)<sup>16</sup> provides, “[e]xcept as specifically provided in Section 2924m, in the event that this section conflicts with any other statute, then this section shall prevail.” In the absence of these sections, CC § 2924h(c) could reasonably be construed as applying the 60-day relation-back period to all eligible bidders. But in the context of CC § 2924m(c), which is controlling, eligible bidders include eligible tenant buyers and others, and the sale “shall not be

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<sup>15</sup> This provision has been re-lettered to CC § 2924m(h) as of Jan. 1, 2023. AB 1837 (2022).

<sup>16</sup> Beginning Jan. 1, 2023, CC § 2924h(f) (eff. 2023) now provides, “[i]n the event that this section conflicts with any other statute, then this section shall prevail.” *Id.* Current CC § 2924m(h) (eff. 2023) still prevails.

1 deemed final until the earliest of the following: . . . [(c)(1)-  
2 (c)(4)]” CC §§ 2924h(c) and 2924m(c), therefore, appear to  
3 contain conflicting periods as to when the sale shall be deemed  
4 final for non-eligible tenant buyers attempting to use CC  
5 § 2924h(c) to invoke the relation-back procedure. CC §§ 2924m(f)  
6 and 2924h(f) resolve this conflict in favor of CC § 2924m.  
7 Therefore, the 60-day relation-back period is reserved for  
8 eligible tenant buyers under CC § 2924m(c)(3).

9       McGilvray argues that the focus on December 22, 2022—the  
10 45th day after the foreclosure sale—is misplaced because  
11 McGilvray had equitable title subject to divestment by all three  
12 classes of persons who qualified under § 2924m(c) at the time  
13 the last bid was taken. Dckt. 59.

14       This overstates his interest. Under CC § 2924h(c) (even  
15 before the amendments), the foreclosure sale is not deemed  
16 perfected on the original sale date until the deed is recorded.  
17 Before the deed is recorded, the sale is neither “perfected” nor  
18 “deemed perfected” – it is just a sale. *Dr. Leevil, LLC v.*  
19 *Westlake Health Care Ctr.*, 6 Cal. 5th 474, 482, 431 P.3d 151,  
20 155 (2018). Under the new statutes, McGilvray’s purchase of  
21 Property at the foreclosure sale was not final until the 45th  
22 day after the sale.

23       In *Ford*, a bankruptcy court in the Central District of  
24 California dealt with the new version of CC §§ 2924h and 2924m  
25 in a similar situation involving a pre-petition foreclosure sale  
26 with a post-petition recording. *In re Ford*, No. 2:22-bk-13649-  
27 WB, 2022 Bankr. LEXIS 3545, 2022 WL 17742285 (Bankr. C.D. Cal.  
28 Dec. 15, 2022). There, two eligible bidders submitted notices of

1 intent to bid within 15 days of the foreclosure sale. *Id.* at \*7.  
2 As a result, the court found that CC § 2924h(c) extended the  
3 time for relation back of the recordation to 60 days, and the  
4 sale was deemed final and perfected as of 8:00 a.m. on the date  
5 of the sale. *Id.* Notably, neither of these eligible bidders were  
6 “eligible tenant buyers,” so the court, in effect, applied  
7 § 2924h(c) to all eligible bidders. *Id.* at \*6; see also, *Exs. 1-*  
8 *2*, Dckt. 20-2, 20-3, Case No. 2:22-bk-13649-WB (Bankr. C.D.  
9 Cal.).

10 But *Ford* differs from the facts here for at least two  
11 reasons. There, the debtor did not raise the issue of when the  
12 sale became final under the new amendments to the foreclosure  
13 procedure. Also, the trustee’s deed was recorded forty-nine (49)  
14 days after the foreclosure sale. *Id.* at \*1. So, there was no  
15 question concerning finality of the sale.

16 When the sale here became final on December 22, 2022, the  
17 automatic stay was in full force and effect. § 362(a)(3).  
18 Although the facts of this case mirror those in *Garner*,  
19 *Bebensee-Wong*, and related progeny, the legislature changed the  
20 date that the sale is deemed final by enacting CC § 2924m(c).  
21 Thus, instead, this case mirrors *Sanders* in that the sale became  
22 final post-petition:

23 On the facts of this case, the Court holds  
24 that the foreclosure sale conducted  
25 postpetition is void, and recordation of the  
26 trustee’s deed . . . cannot resuscitate the  
void sale by reliance on a state statute that  
would relate back the act to a time when it  
would not have been prohibited.

27 *Sanders*, 198 B.R. at 329.

28 ///

1           Therefore, the sale became final under CC § 2924m(c)(4)  
2 post-petition and is void. CC § 2924h(c) cannot be used to  
3 finalize an incomplete sale to a time before the petition was  
4 filed. McGilvray does not qualify for the relation back effects  
5 of CC § 2924h(c) as the statute was written in 2022.<sup>17</sup>

6  
7 D. The Fjeldsted Factors Do Not Support Annuling the Stay

8           The court now turns to McGilvray's request to annul the  
9 automatic stay.

10          11 U.S.C. § 362(d)(1) allows the court to grant relief from  
11 the stay for cause, including the lack of adequate protection.  
12 "Because there is no clear definition of what constitutes  
13 'cause,' discretionary relief from the stay must be determined  
14 on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717  
15 (9th Cir. 1985).

16          11 U.S.C. § 362(d)(2) allows the court to grant relief from  
17 the stay if the debtor does not have an equity in such property  
18 and such property is not necessary to an effective  
19 reorganization.

20          The Ninth Circuit Court of Appeals has warned that  
21 retroactive relief should only be "applied in extreme  
22 circumstances." *Mataya v. Kissinger (In re Kissinger)*, 72 F.3d  
23 107, 109 (9th Cir. 1995), quoting *In re Shamblin*, 890 F.2d 123,  
24 126 (9th Cir. 1989); see also *In re Aheong*, 276 B.R. 233, 250

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25          <sup>17</sup> Debtor's counsel has argued that two provisions of CC § 2924m  
26 establish Debtor's title to Property during these "open window" periods. That  
27 is incorrect. Both provisions, subdivisions (f) dealing with a trustor's  
28 title until the sale is deemed final, and (1) dealing with continued hazard  
insurance coverage until the sale is final became effective in 2023 and were  
not part of § 2924m in 2022 when the salient facts here occurred. See CC  
§ 2924m(o) (2023).

1 (B.A.P. 9th Cir. 2002). When deciding a motion to annul the  
2 automatic stay, the court may consider the "*Fjeldsted*" factors:

- 3 1. Number of filings;
- 4 2. Whether, in a repeat filing case, the  
circumstances indicate an intention to delay  
and hinder creditors;
- 5 3. A weighing of the extent of prejudice to  
creditors or third parties if the stay relief  
is not made retroactive, including whether  
6 harm exists to a bona fide purchaser;
- 7 4. The Debtor's overall good faith (totality  
of circumstances test);
- 8 5. Whether creditors knew of the stay but  
nonetheless took action, thus compounding the  
9 problem;
- 10 6. Whether the debtor has complied, and is  
otherwise complying, with the Bankruptcy Code  
and Rules;
- 11 7. The relative ease of restoring parties to  
the status quo ante;
- 12 8. The costs of annulment to debtors and  
creditors;
- 13 9. How quickly creditors moved for annulment,  
or how quickly debtors moved to set aside the  
14 sale or violative contract;
- 15 10. Whether, after learning of the  
bankruptcy, creditors proceeded to take steps  
in continued violation of the stay, or whether  
16 they moved expeditiously to gain relief;
- 17 11. Whether annulment of the stay will cause  
irreparable injury to the debtor;
- 18 12. Whether stay relief will promote judicial  
economy or other efficiencies.

19 *Fjeldsted*, 293 B.R. at 24-25. One factor alone may be  
20 dispositive. *Id.* The two main factors focused on by courts are  
21 "(1) whether the creditor was aware of the bankruptcy petition;  
22 and (2) whether the debtor engaged in unreasonable or  
23 inequitable conduct, or prejudice would result to the creditor."  
24 *In re Merriman*, 616 B.R. 381, 387 (B.A.P. 9th Cir. 2020),  
25 quoting *Nat'l Env'tl. Waste Corp.*, 129 F.3d at 1055.

26 Weighing the *Fjeldsted* factors follows:

27 1. Number of filings: This appears to be Debtor's first  
28 bankruptcy filing in this district. This factor is inapplicable.

1           2. Whether, in a repeat filing case, the circumstances  
2 indicate an intention to delay and hinder creditors: This factor  
3 is inapplicable since this is Debtor's first bankruptcy filing.

4           3. Extent of prejudice to creditors or third parties if the  
5 stay relief is not made retroactive, including whether harm  
6 exists to a bona fide purchaser: McGilvray claims to be a bona  
7 fide, pre-petition purchaser of Property. At the time the  
8 Trustee's Deed was recorded, McGilvray claims he did not have  
9 actual or constructive notice of the bankruptcy. Dckt. 46, 47.  
10 McGilvray contends he will be prejudiced if the stay is not  
11 annulled.

12           Meanwhile, Debtor contends that McGilvray will not be  
13 prejudiced if the stay is not annulled because he can get his  
14 money back from the sale and not enough time has passed for  
15 there to be any serious prejudice. Dckt. 58, 61. Additionally,  
16 the automatic stay was violated, so Debtor argues the sale is  
17 void as a matter of law. Since annulment is an extraordinary  
18 remedy in repeat-filing cases with legitimate harm to innocent  
19 third parties, this factor should support denying this motion.  
20 Further, Debtor claims that if the stay is annulled, she will  
21 suffer catastrophic financial ruin and lose over \$250,000 in  
22 equity.

23           There are no facts suggesting McGilvray has transferred  
24 Property, or that any third party is affected if the stay is not  
25 annulled.

26           The focus of this factor is on harm or prejudice to third  
27 parties and creditors, including bona fide purchasers. It is  
28 unclear whether McGilvray can recover the money already paid.

1 From McGilvray's previous motion, it appeared that the mortgagee  
2 has already been paid from the foreclosure sale proceeds. It  
3 seems a claim for unjust enrichment in the proper forum may be  
4 an option. McGilvray may have claims to recover his funds from  
5 third parties on various tort or contract theories.

6 This factor weighs against annulment.

7 4. Debtor's overall good faith (totality of the  
8 circumstances): McGilvray does not contend that Debtor or  
9 counsel misrepresented facts or engaged in egregious behavior.  
10 Dckt. 46. Debtor filed bankruptcy more than 15 days post-  
11 foreclosure, but less than 60 days after the sale. McGilvray  
12 contends that timing alone makes this factor support annulment.

13 The court disagrees. Debtor's largely uncontroverted  
14 declaration states she was made aware of the sale weeks after  
15 the foreclosure. Dckt. 62. No evidence was presented that she  
16 was aware of the sale date. It seems likely she received notice  
17 of the sale, but there is no proof of that on this motion.  
18 Nevertheless, given the delay before many sales are final under  
19 the new law, this factor does not support annulment.

20 5. Whether creditors knew of the stay but nonetheless  
21 acted, thus compounding the problem: McGilvray contends that he  
22 did not have knowledge of the bankruptcy at the time this case  
23 was filed. Dckt. 47. McGilvray's bankruptcy attorney declares  
24 that there was no record notice or constructive notice in the  
25 form of a recorded notice of bankruptcy. Dckt. 48. Movant was  
26 not listed as a creditor in Debtor's schedules. Although  
27 McGilvray recorded the Trustee's Deed and initiated the Unlawful  
28 Detainer Action post-petition, after learning of the bankruptcy,



1 McGilvray filed a motion for relief from the automatic stay (PK-  
2 1), and then subsequently filed this motion to annul the stay.

3 In contrast, Debtor contends that McGilvray knew of the  
4 stay at the time the Trustee's Deed was recorded and at the time  
5 he filed the Unlawful Detainer Action. Dckt. 58, 61. Debtor  
6 suggests that the evidence proves he knew of the bankruptcy on  
7 the date it was filed and compounded the problem by recording  
8 the Trustee's Deed, giving a three-day notice to quit,  
9 initiating the Unlawful Detainer Action, and then waiting three  
10 months to file the first stay relief motion and four and one-  
11 half months to file this motion.

12 The court disagrees with Debtor here. There is nothing  
13 except speculation that McGilvray knew of the bankruptcy filing  
14 before he brought the Trustee's Deed to the Recorder's Office.  
15 He obviously subsequently learned of the bankruptcy, but he did  
16 not affirmatively act to seek stay relief for some months  
17 thereafter.<sup>18</sup>

18 As noted above, McGilvray was not listed in the bankruptcy  
19 schedules or master address list. The only evidence provided by  
20 Debtor is a declaration "on information and belief" that  
21 McGilvray knew about the bankruptcy before the Trustee's Deed  
22 was recorded and before the Unlawful Detainer Action was filed.  
23 Dckt. 62. However, non-expert witness testimony must be based on  
24 the personal knowledge of the witness. Fed. R. Evid. 602.  
25 Debtor's declaration fails to provide any credible evidence that  
26 McGilvray had knowledge of the bankruptcy.

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27 <sup>18</sup> The court acknowledges McGilvray's counsel's representations  
28 supported by bankruptcy counsel's statements that there were ongoing  
settlement discussions for a time before motions were filed in this court.

1 This factor favors annulment on this record.

2 6. Whether the debtor has complied, and is otherwise  
3 complying, with the Bankruptcy Code and Rules: McGilvray  
4 contends that it is impossible to confirm a plan because no  
5 adversary proceeding has been filed. Dckt. 46. However, Debtor  
6 claims to be complying with the plan and is current on payments.  
7 Although the objection to plan confirmation was sustained  
8 earlier, the plan can be reconsidered or modified if this motion  
9 is denied.

10 Notwithstanding failure to list McGilvray as a creditor in  
11 this bankruptcy case, Debtor appears to have complied with the  
12 Bankruptcy Code and Rules. This factor weighs slightly against  
13 annulment.

14 7. The relative ease of restoring the parties to the *status*  
15 *quo ante*: McGilvray contends that that he cannot be compelled to  
16 give up his interest in Property without a repayment. Dckt. 46.  
17 The original lender has been paid, so an adversary proceeding  
18 would be necessary. In response, Debtor claims that it is easy  
19 to restore the parties to the *status quo ante* because McGilvray  
20 can be repaid because the sale is void. Dckt. 61.

21 The *status quo ante* appears to be the period after the  
22 foreclosure sale but before the Trustee's Deed was recorded and  
23 the Unlawful Detainer Action initiated. The Unlawful Detainer  
24 Action is dismissed. However, under CC § 2924m(c)(4), restoring  
25 Debtor to the *status quo ante* would result in Debtor possessing  
26 legal and equitable title in Property because the foreclosure  
27 sale was not final at the time of the bankruptcy.

28 ///

1 True enough, it is likely some litigation between McGilvray  
2 and other parties may ensue. But when weighed here against  
3 Debtor's losses if annulment is granted, the court sees this  
4 factor slightly favoring denial of annulment.

5 8. The costs of annulment to the debtor and creditors:  
6 McGilvray claims the cost of annulment is the cost of an  
7 adversary proceeding. Dckt. 46. McGilvray contends this factor  
8 supports annulment but insists that it should be limited due to  
9 the extensive facts of this case.

10 In contrast, Debtor's asserted cost of annulment is  
11 \$250,000 plus attorney's fees, which is the equity lost as  
12 result of the foreclosure sale. Dckt. 61-62. Debtor also says  
13 that there is no cost for McGilvray. Instead, she asserts,  
14 McGilvray would receive a \$250,000 windfall from Debtor's equity  
15 in Property if the sale were to be finalized and perfected.

16 Debtor has other creditors in this case. The successful  
17 confirmation of a plan and repayment of creditors is enhanced if  
18 annulment is denied. Otherwise, Debtor, her mother, and sister  
19 will no longer have a residence and the possible payment to  
20 creditors will be diminished.

21 Even if she prevails on this motion, Debtor must pay off  
22 Flagstar to keep her residence. Any right Debtor had to  
23 reinstate the loan with Flagstar vanished five days before the  
24 sale. CC § 2924c(a)(1), (e). She has no windfall.

25 This factor weighs against annulment.

26 9. How quickly creditors moved for annulment, or how  
27 quickly the debtor moved to set aside the sale or contract: In  
28 the beginning of this case, there were some settlement

1 negotiations and neither party took any action. McGilvray  
2 initially moved for relief from stay on March 1, 2023, which is  
3 four months post-petition. PK-1.

4 Debtor claims that this delay is inexcusable; however,  
5 Debtor also acknowledges that the unfamiliarity with the new  
6 statutory scheme likely delayed the filing of the stay relief  
7 motion. Debtor claims she did not know about the foreclosure  
8 sale until late November 2022. She filed this case on December  
9 1, 2022. Debtor moved expeditiously.

10 This factor weighs slightly against annulment.

11 10. Whether, after learning of the bankruptcy, creditors  
12 proceeded to take steps in continued violation of the stay, or  
13 whether they moved to expeditiously gain relief: McGilvray  
14 claims he did not have notice of the bankruptcy. Dckt. 46-47.  
15 True enough, he was not listed in the schedules or the master  
16 address list. Although McGilvray did initiate the Unlawful  
17 Detainer Action, he has not prosecuted that case and it has been  
18 dismissed. *Id.*

19 In response, Debtor speculates McGilvray was likely  
20 informed of the bankruptcy by the foreclosure trustee on the  
21 petition date, thus prompting him to record the Trustee's Deed  
22 the next day. That recording also occurred before the 45-day  
23 period alleged to be applicable under CC § 2924h(c). Also,  
24 McGilvray's declaration was silent as to when he learned of the  
25 bankruptcy. The declaration says McGilvray had no knowledge of  
26 the bankruptcy at the time of recording but makes no mention of  
27 whether he knew about it at the time he filed the Unlawful  
28 Detainer Action. Given the 4-month delay in filing the first

1 stay relief motion, this factor weighs against annulling the  
2 stay.

3 11. Whether annulment of the stay will cause irreparable  
4 injury to the debtor: McGilvray says this factor supports  
5 annulment because Debtor's right to reorganize was greatly  
6 diminished at 8:01 a.m. on November 7, 2022 because the  
7 foreclosure sale took place later that day. Dckt. 46.  
8 McGilvray's position implies that Debtor could not have filed  
9 bankruptcy before the sale but after 8:01 a.m. on that same day,  
10 causing it to occur post-petition, and then use CC § 2924h(c) to  
11 relate the sale back to before the petition date. However, this  
12 approach is expressly rejected in *Sanders*. 198 B.R. at 329

13 Debtor will undoubtedly suffer irreparable injury if the  
14 stay is annulled as discussed above. This factor weighs against  
15 annulment.

16 12. Whether stay relief will promote judicial economy:  
17 Annulling the stay would promote judicial economy by avoiding  
18 litigation in the bankruptcy case. But, as mentioned, McGilvray  
19 has rights to prosecute if he so chooses. This factor supports  
20 annulling the stay.

21 The court concludes that the *Fjeldsted* factors do not  
22 support annulling the automatic stay. The result may be  
23 different if the sale had finalized before the petition date.

## 24 25 V. CONCLUSION


26 The foreclosure sale was finalized post-petition and is  
27 thus void as a violation of the automatic stay. CC § 2924h(c)  
28 cannot be invoked to finalize the sale to the pre-petition date

1 of the sale because the Trustee's Deed was recorded before the  
2 expiration of the 45-day bid period. The automatic stay was  
3 therefore applicable. McGilvray violated the stay when he  
4 recorded the Trustee's Deed. The *Fjeldsted* factors when properly  
5 weighed and considered do not justify annulment of the stay.  
6 Accordingly, the motion to annul the automatic stay is DENIED.

7 A separate order shall issue.

8  
9 **Dated:** May 25, 2023

By the Court

10  
11   
12 René Lastreto II, Judge  
United States Bankruptcy Court

**Instructions to Clerk of Court  
Service List - Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked \_\_\_\_, via the U.S. mail.

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